

**§ 23.109 Compliance and enforcement.**

(a) *Complaints.* Any person who believes that there has been a violation of this subpart may personally or through a representative, file a written complaint in accordance with FAA regulations 14 CFR part 13. The complaint must be submitted to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Enforcement Docket (AGC-10), 800 Independence Avenue, SW., Washington, DC 20591. Complaints which meet the requirements of 14 CFR part 13, shall be docketed and processed as formal complaints.

(b) *Compliance procedures.* In the event of noncompliance with this subpart by a sponsor, the FAA Administrator may take any action provided for in Section 519 of the Airport and Airway Improvement Act of 1982, as amended.

9. Section 23.111 would be amended by revising the heading; redesignating paragraph (a) as (a)(1) and paragraph (b) as (a)(2); designating the introductory text as paragraph (a); and adding new paragraphs (b) and (c) to read as follows:

**§ 23.111 Effect of subpart.**

(a) \* \* \*

(b) Nothing in this subpart shall preempt any State or local law, regulation, or policy enacted by the governing body of a sponsor, or the authority of any State or local government or sponsor to adopt or enforce any law, regulation, or policy relating to DBE's. In the event that a State or local law, regulation, or policy conflicts with the requirements of this subpart, the sponsor shall, as a condition of remaining eligible to receive Federal financial assistance from the DOT, take such steps as may be necessary to comply with the requirements of this subpart.

(c) Nothing in this subpart prohibits a sponsor with its own legal authority to employ set-asides from using a DBE set-aside in the award of a concession. This subpart does not provide independent legal authority to employ set-asides. Sponsors shall not use group-specific set-asides in concessions.

10. Appendix A to subpart F would be amended by revising the heading as set forth below and adding a second category to the table as follows:

*Appendix A to Subpart F—Size Standards for the Airport Concession Program*

\* \* \* \* \*

**Other Participants**

Management contractors:

Parking lots ..... \$3.5

**Other Participants—Continued**

Other .....	3.5
Automotive dealerships .....	To be defined.
Other providers of goods or services.	As defined in 13 CFR Part 121.

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**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AB83

**Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule to Determine *Lepidium montanum* var. *stellae* (Kodachrome Pepper-grass) as an Endangered Species.**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) withdraws the proposed rule (57 FR 49671; November 3, 1992) to list a Utah plant, *Lepidium montanum* var. *stellae* (Kodachrome pepper-grass), to be an endangered species. Additional field research has provided new information on the abundance and distribution of *Lepidium montanum* var. *stellae*. It is now known to have a much larger population size, and it is more widely distributed. Hence, the Kodachrome pepper-grass is relatively secure from threats to its existence because of its larger numbers and greater range. The Service has determined that this species is not likely to become either endangered or threatened throughout all or a significant portion of its range in the foreseeable future, and it does not qualify for protection under the Endangered Species Act.

**ADDRESSES:** The file of this proposal is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 2060 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

**FOR FURTHER INFORMATION CONTACT:** John L. England at the above address, telephone (801) 975-3620.

**SUPPLEMENTARY INFORMATION:****Background**

The Fish and Wildlife Service (Service) published a proposed rule to determine *Lepidium montanum* var.

*stellae* (Kodachrome pepper-grass) to be an endangered species on November 3, 1992 (57 FR 49671). This proposal was supported by biological information indicating the species was extremely limited in numbers (less than 1,000 plants) and that it was found only in restricted microhabitats (Franklin 1990). Because of this small population, a restricted distribution, and imminent threats to this known population (57 FR 49671), Service biologists and others (Welsh 1978) believed that it should be afforded protection of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

The Service published the proposed rule to determine *Lepidium montanum* var. *stellae* an endangered species using the best available information. Nine comments were received during the comment period. Six commenters supported the listing on the basis of the information supporting the proposed rule. One commenter opposed listing but provided no substantive rationale. The Bureau of Land Management and the State of Utah recommended that the Service conduct an additional review of *L. montanum* var. *stellae* before the promulgation of a final rule because a recent survey had documented additional populations of the plant. These populations were previously identified as the relatively common *L. montanum* var. *jonesii* and *L. montanum* var. *montanum*, but were subsequently identified as *L. montanum* var. *stellae* in the recent survey (Welsh and Thorne 1992).

The Service and Bureau of Land Management conducted a survey during the spring of 1993. This joint survey confirmed the additional populations of *Lepidium montanum* var. *stellae* found by Welsh and Thorne (1992), and additional data and estimates were obtained (Armstrong and England 1993). The range of *L. montanum* var. *stellae* was found to extend about 100 km (60 mi) in an area of central Kane County, Utah. Plants were common, but discontinuously distributed on highly gypsiferous soils of the Carmel and Moenkopi formations. Its population size was estimated to be in excess of 100,000 individuals (Armstrong and England 1993).

**Finding and Withdrawal**

Recent rare plant surveys have shown a much larger population size and distribution for *Lepidium montanum* var. *stellae* (Welsh and Thorne 1992). In addition to the population in the Kodachrome Basin, it occurs on the Skutumpah Bench and in the Johnson Wash drainage; all in Kane County, Utah. The known population size of *L.*

*montanum* var. *stellae* has been increased by a hundredfold, from 1,000 to over 100,000 plants, and its known range of 100 km (60 mi) greatly exceeds the range described in the previous distributional information used by the Service in its proposed rule (Welsh and Thorne 1992; Armstrong and England 1993).

The Service previously determined that potential mineral development and recreational activity posed a threat to *L. montanum* var. *stellae* populations. Although some threat still exists to individual plants of this species, the number and size of the populations and their extensive range provides insulation from such threats.

The Service has reviewed the status of *L. montanum* var. *stellae* relative to the five factors in section 4(a) of the Act and has determined that it is not likely to become either endangered or threatened throughout all or a significant portion of its range in the foreseeable future, and it does not qualify for protection under the Act. Therefore, in compliance with section 4(b)(6)(B)(ii) of the Endangered Species Act (Act) of 1973, as amended, the Service finds that there is not sufficient evidence to justify the proposed listing action and withdraws its proposed rule of November 3, 1992 (57 FR 49671), to list *Lepidium montanum* var. *stellae* as an endangered species. As a result of this determination, the Service will remove this species from category 1 in the next plant notice of review and place it in category 3C indicating that it has proved to be more abundant than previously believed.

#### References Cited

- Armstrong, L. and J.L. England. 1993. Status survey for *Lepidium montanum* var. *stellae*. Bureau of Land Management and the U.S. Fish and Wildlife Service, Salt Lake City, Utah. 3 pp.
- Franklin, M.C. 1990. Report for 1989 challenge cost share project USDI Bureau of Land Management, target species: *Xylorhiza cronquistii* (Cronquist woodyaster), *Lesquerella tumulosa* (Kodachrome bladderpod), *Lepidium montanum* var. *stellae* (Kodachrome pepper-grass). Utah Natural Heritage Program, Salt Lake City. 11 pp.
- Welsh, S.L. and K.H. Thorne. 1992. Report of Bureau of Land Management Sensitive Plant Species, Western Kane County, Utah. Unpublished report prepared for the Bureau of Land Management, Salt Lake City, Utah. iv+56 pp.

#### Authors

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Office, Denver, Colorado (303/236-7398).

#### Authority

The Authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: September 23, 1993.

**Bruce Blanchard,**

Acting Director, Fish and Wildlife Service.

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#### 50 CFR Part 17

RIN 1018-AC09

#### Endangered and Threatened Wildlife and Plants; Proposal To Determine the Plant *Pediocactus Winkleri* (Winkler Cactus) To Be an Endangered Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service (Service) proposes to determine *Pediocactus winkleri* (Winkler cactus) an endangered species. *P. winkleri* is endemic to a specific soil type in lower elevations of the Fremont River and Muddy Creek drainages of south-central Utah. Six populations of *P. winkleri* cactus are known. These populations total about 3,500 plants that grow on about 80 hectares (200 acres) of habitat. *P. winkleri* is threatened by plant collecting and by habitat disturbances due to mining, recreation, and livestock. Listing *P. winkleri* as an endangered species would provide protection under the authority of the Endangered Species Act of 1973, as amended.

**DATES:** Comments from interested parties must be received by December 6, 1993. Public hearing requests must be received by November 22, 1993.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2060 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104. Comments and materials received will be available for public inspection, by appointment, during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** John L. England (see ADDRESSES section above) at (801) 975-3630.

#### SUPPLEMENTARY INFORMATION:

##### Background

*Pediocactus winkleri* Heil (Winkler cactus) was discovered by Agnes Winkler in the early 1960's. It was first

described in the scientific literature by Dr. Kenneth Heil from specimens he collected in the vicinity of Notom, Utah, during 1977 and 1978 (Heil 1979).

*Pediocactus* includes *P. winkleri* and seven other species (Arp 1972; Heil et al. 1981; Benson 1982). These extant species of *Pediocactus* appear to be relics of a larger and more widespread genus whose distribution may have been fractured by climatic changes (Benson 1982).

*P. winkleri* is a small globose cactus with stems 2.5 to 6.4 cm (1 to 2.5 in) long, and up to 5.1 cm (2 in) in diameter. It has spine clusters of 9 to 11 small radial spines with fine, woolly hairs at the base. The peach or pink colored flowers of *P. winkleri* are urn shaped, 1.8 to 2.5 cm (0.7 to 1 in) long and 1.8 to 3.8 cm (0.7 to 1.5 in) in diameter. The fruit is barrel shaped with shiny black seeds (Heil 1979; Heil et al. 1981; Welsh et al. 1987).

*P. winkleri* occurs in six populations that total about 3,500 plants (Heil 1984; Neese 1987; Kass 1990; U.S. Fish and Wildlife Service 1990). *P. winkleri* is a plant of *Atriplex* (saltbush)-dominated desert shrub communities, and it usually grows on the tops and sides of rocky alkaline hills or benches (Heil 1984). It grows in soils that have a silt or clay component and that are primarily derived from the Dakota geologic formation (Neese 1987).

The range of *P. winkleri* forms a narrow arc which extends from Notom in central Wayne County to Hartnet Draw in southwestern Emery County, Utah. The range of the plant extends for about 48 km (30 mi), but Service biologists estimate that the actual area occupied by the plant is about 80 hectares (200 acres). About 500 plants grow on Capitol Reef National Park (Park), but the remainder grow on lands managed by the Bureau of Land Management (BLM) that lie just east of the Park.

The range of *P. winkleri* approaches populations of the listed endangered cactus *P. despainii* (San Rafael cactus). *P. despainii* and *P. winkleri* are presently classified as separate species, but phylogenetically, these two plants may be closely related. It is possible that future taxonomic revisions of *Pediocactus* may classify both plants as subspecies of *P. winkleri*, the first of the two species to be described in the scientific literature (Heil 1979; Welsh and Goodrich 1980). However, attempts to artificially hybridize the two species in domestic gardens have not been successful (Kenneth Heil, San Juan College, New Mexico, pers. comm., 1993), suggesting that the present